REMARKS

Regarding the Status of the Claims:

Claims 27 – 47 remain pending.

Claims 27 – 47 stand finally rejected.

Regarding the Claim Rejections:

The Office action rejects:

I. claims 27 – 45 under 35 U.S.C §102(b) as being anticipated by US 5,380,487 to Choperena et al. ("Choperena"); and

II. claims 46 and 47 under 35 U.S.C §103(a) over Choperena.

Regarding Rejection I:

Applicants respectfully traverse the rejection of claims 27 – 45 under 35 U.S.C §102(b) over Choperena and request that this ground of rejection be withdrawn.

Choperena does not disclose a multipath access system for use in an automated immunoassay analyzer, comprising a transfer shuttle, positioned to slide in a direction perpendicular to a portion of the transport device, for moving vessels to and from the vessel holders, and a programmable controller, programmed to determine an individual path along the continuous loop for each of a plurality of vessels, where each vessel has a resource requirement, and where the determination of each path is based on the resource requirement associated with each vessel.

As stated at col. 6, lines 33 – 37, each slot of the Choperena analyzer is equal to the first indexing time of the incubator belt, and thus a vessel can be transferred to the wash wheel only at the beginning of the indexing cycle of the incubator. Because the processing cycle is fixed, the scheduler matches analyte tests and assay resources within the fixed cycle.

Thus, Choperena fails to disclose "a programmable controller, programmed to determine an individual path along the continuous loop for each of the vessels, wherein the determination of each path is based on a resource requirement associated with each vessel." This is because each of the vessels on belt 54 and each of the vessels on wash wheel 102 moves in synchronization because the belt 54 intersects the wash wheel 102 in single position-by-position

increments. As disclosed at col. 13, lines 38 – 44, reaction vessels are transported along a predetermined path and at predetermined positions along that path the reaction vessels will be acted upon by the wash station and/or the read station.

In contrast, the claims of the present disclosure require that the vessels proceed on an individual path based on the resource requirement associated with each vessel, which is enabled by the "means for moving vessels" as claimed. In addition, the programmable controller utilizes information about the resource requirements for each individual vessel to determine the individual path. Therefore, Choperena does not anticipate the claims of the present application at least because there is no programmable controller as claimed, and therefore an individual path cannot be determined for each vessel.

The outstanding Office action identified clerical errors in the citations to the pertinent passages of Choperena, which have been corrected above. The outstanding Office action does not explain with pinpoint citation where Choperena allegedly discloses "a programmable controller system programmed to determine the individual path" as asserted on pages 8 and 9 of the Office action. Reference to the "entire document" and multiple columns of disclosure do not provide a *prima facie* showing of where such specific claim limitation is allegedly disclosed. To the contrary, col. 6, lines 3 – 7 states explicitly that "each assay resource has a predetermined fixed operation window within the fixed processing cycle. Resultingly, the control logic for one assay resource can rely on predetermined timing of other dependent and independent assay resources." As further stated, analyte tests having variable protocols and that are processed by moving reaction vessels in different chronologies can be interleaved if their assay resource requirements do not conflict, i.e. analyte tests with shorter processing time can be entered after those with longer processing times and the shorter analyte test can finish first. Col. 6, lines 8 – 14. No mention is made of determining individual paths for assay resources. Moving assay resources in different chronologies does not correspond to determining individual paths along a continuous loop as claimed.

Regarding Rejection II:

Applicants respectfully submit that the rejection of claims 46 and 47 under 35 U.S.C §103(a) over Choperena is improper.

With respect to claims 46 and 47, the Office action concludes that:

it would have been obvious to one of ordinary skill in the art at the time of the invention to move the motor of the first continuous loop (belt 54) clockwise and then counterclockwise so as to achieve the necessary incubation time before transporting to the second continuous loop (e.g., wash station loop 100 or read station loop 130).

To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (MPEP § 2143).

With respect to claims 46 and 47, the Office has not shown that the Choperena teaches or suggests all the claim limitations. (MPEP § 2143). Instead, the Office presents a conclusory statement that these claims are obvious, without presenting any evidentiary support for this conclusion. Accordingly, this rejection is not properly founded and should be withdrawn.

Claims 46 and 47 are also in condition for allowance based on the same reasons given in rejection I. With regard to claim 46, it is allowable based on its dependence from claim 27. With regard to claim 47, Choperena does not disclose "determining an individual path along a first continuous loop for each of a plurality of samples" because the samples of Choperena move in concert with one another, and therefore cannot move on an "individual path" as recited in claim 27. Additionally, Choperena nowhere discloses or suggests optimizing the path determined for each sample as required by claim 47.

In Conclusion:

The present application is in condition for allowance. Applicants request favorable action in this matter. To facilitate the resolution of any issues or questions presented by this paper, the Examiner is welcome to contact the undersigned by phone to further the discussion.

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Respectfully submitted,

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